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Recording Area

Name and Return Address

Attorney James R. Smith
Pinkert Law Firm LLP
454 Kentucky St., P.O. Box 89
Sturgeon Bay, WI 54235

281-24-15090101

Parcel Identification Number (PIN)

WDNR DETERMINATION OF CONCURRENCE
WITH THE APPROXIMATE ORDINARY HIGH
WATER MARK FOR THE
CITY OF STURGEON BAY
WEST SIDE WATERFRONT PROJECT

Drafted by:
Michael L. Bruhn
Director of Policy and External Affairs
State of Wisconsin
Department of Natural Resources
101 South Webster Street, Box 7921
Madison, WI 53707-7921
Telephone: 608-266-2621



October 20th, 2014

Attorney James R. Smith
Pinkert Law Firm, LLP
454 Kentucky St.
P.O. Box 89
Sturgeon Bay, WI 54235-0089

Re: WDNR Determination of Concurrence with the approximate Ordinary High Water Mark for the City of Sturgeon Bay West Side Waterfront Project

Dear Mr. Smith:

At your request I have reviewed the attached "Plat of Survey," dated October 2, 2014, prepared by Baudhuin Inc. and certified by Wisconsin land surveyor Michael G. McCarty (Survey), depicting the approximate location of the ordinary high water mark (OHWM) with respect to an area located in downtown Sturgeon Bay. The Survey is attached hereto as Exhibit A and incorporated herein by reference. The City of Sturgeon Bay (City) is seeking to establish its property rights with respect to the area legally described on attached Exhibit B which is incorporated herein by reference (the "Parcel").

Under the public trust doctrine, the state holds title to the beds of all natural lakes, including Lake Michigan, in trust for the public. See, Wis. Const., Art. 9, §1. In addition, the Wisconsin Department of Natural Resources (DNR) holds the authority, as the central unit of government regulating waters of the state, to make the determination of the location of the OHWM. The OHWM determination for this site not only defines the extent of state title, it also establishes the jurisdictional authority of the DNR by defining the boundary between the bed and bank of Lake Michigan for the Parcel.

Typically, an OHWM concurrence would require a DNR expert to conduct a field analysis of the physical characteristics of the shore for the purpose of verifying the point on the bank or shore where water has left a distinct mark—the OHWM. Due to historic filling of public lakebed, the location of the OHWM could not be determined by DNR in the routine course. Instead, DNR reviewed several historic maps in order to analyze the historic evolution of the shoreline.

In 1955, the City of Sturgeon Bay established a bulkhead line ordinance, which was approved by the Public Service Commission (the predecessor to DNR with respect to OHWM responsibilities). Despite the 1955 bulkhead approval, the land filled did not conform as nearly as practicable to the shore and was not accompanied by a lakebed lease issued by Board of Commission of Public Lands (BCPL) pursuant to Wis. Stat. §24.39(4). Because the 1955 bulkhead was inconsistent with the requirements of Wis. Stat. §30.11(2), it did not come into force. The 1955 bulkhead file, however, contained a map which provided a depiction of the shoreline in 1955, which included an unusual bay-like feature. It is the DNR's understanding that the approximate location of the OHWM in the Plat of Survey described above was based upon the location of the shoreline in the 1955 map.

DNR was able to review a 1925 U.S. War Department map image (1925 Map) that provided water depths in the Sturgeon Bay area. At that time, the Parcel was not dry land but was actually under the waters of Sturgeon Bay. The 1925 Map illustrates that the Parcel was bookended by an abutment labeled L.M. Washington Dock and designated as Mill Refuse on the southeastern side and a dock structure labeled Teweles & Brandeis on the northwestern side. The Parcel area between the two solid structures in the 1925 Map appears to have been a shallow bay of 2 ft. water depth. In my opinion, the Parcel area would have filled with sediment slowly over the

course of time between the 1925 Map and the 1955 Bulkhead Map. The gradual addition of soil to the shallow area shown in the 1925 Map should be considered accretion and would extend the riparian title out to the OHWM.

The DNR has been working with the City on its proposal to redevelop the portion of the downtown area located above the approximate OHWM with a private retail facility and a public promenade and other public features below the OHWM. The DNR has reviewed the attached Survey and concurs with the approximate location of the OHWM with respect to the Parcel. It is DNR's understanding that the City of Sturgeon Bay is the riparian owner with respect to the Parcel. By execution of this document, the DNR concurs that title to the Parcel above the OHWM will rest in the City due to its status as the adjacent riparian owner. Below the OHWM, the proposed uses contemplated by the City must remain consistent with the public trust uses that allow for public use and enjoyment of the navigable waters of Lake Michigan.

The DNR appreciates the opportunity to work with you in protecting Wisconsin's public trust resources and your cooperation.

Sincerely, -



Michael L. Bruhn
Director of Policy and External Affairs

Subscribed and sworn to before me this

20th Oct, 2014



Megan E. Correll

My Commission is permanent.

Plat of Survey

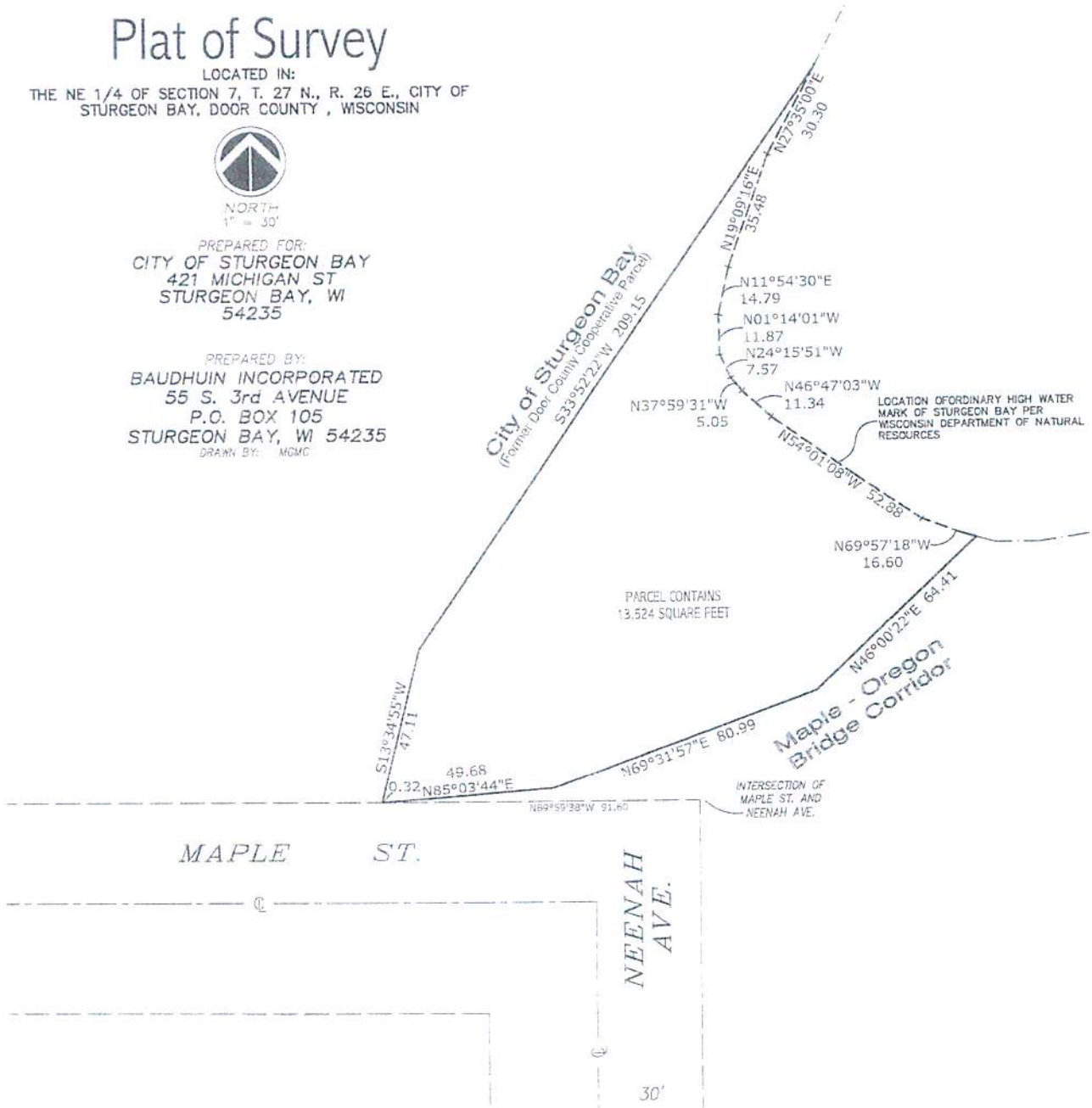
LOCATED IN:
THE NE 1/4 OF SECTION 7, T. 27 N., R. 26 E., CITY OF
STURGEON BAY, DOOR COUNTY, WISCONSIN



NORTH
1" = 30'

PREPARED FOR:
CITY OF STURGEON BAY
421 MICHIGAN ST
STURGEON BAY, WI
54235

PREPARED BY:
BAUDHUIN INCORPORATED
55 S. 3rd AVENUE
P.O. BOX 105
STURGEON BAY, WI 54235
DRAWN BY: MGMC



Description:

A parcel of land located in the NE 1/4 of Section 7, T. 27 N., R. 26 E., City of Sturgeon Bay, Door County, Wisconsin, bounded and described as follows:

Commencing at the intersection point of the east line of Neenah Avenue and the north line of Maple Street, thence N. 89°59'38" W., 91.60 feet along the north line of Maple Street to the point of beginning of lands to be described; thence N85°03'44"E -- 49.68 feet; thence N69°31'57"E -- 80.99 feet; thence N46°00'22"E -- 64.41 feet to the approximate ordinary high water mark of Sturgeon Bay as determined by the Wisconsin Department of Natural Resources; thence along said ordinary high water mark as follows: N69°57'18"W -- 16.60 feet; thence N54°01'08"W -- 52.88 feet; thence N46°47'03"W -- 11.34 feet; thence N37°59'31"W -- 5.05 feet; thence N24°15'51"W -- 7.57 feet; thence N01°14'01"W -- 11.87 feet; thence N11°54'30"E -- 14.79 feet; thence N19°09'16"E -- 35.48; thence N27°35'00"E -- 30.30 feet; thence leaving said ordinary high water mark S33°52'22"W -- 209.15 feet; thence S13°34'55"W -- 47.11 feet to the aforementioned north line of Maple Street; thence S89°59'38"E - 0.32 feet along said north line to the point of beginning. Said parcel contains 13,524 square feet.

SURVEYOR'S CERTIFICATE:

I, MICHAEL G. Mc CARTY, REGISTERED LAND SURVEYOR FOR BAUDHUIN INCORPORATED, HEREBY CERTIFY THAT I HAVE SURVEYED THE DESCRIBED PROPERTY AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THE MAP IS A TRUE REPRESENTATION THEREOF AND SHOWS THE SIZE AND LOCATION OF THE PROPERTY, ITS EXTERIOR BOUNDARIES, THE LOCATION OF ALL STRUCTURES THEREON, FENCES, APPARENT EASEMENTS AND ROADWAYS AND VISIBLE ENCROACHMENTS, IF ANY.

THIS SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE PRESENT OWNERS OF THE PROPERTY, AND ALSO THOSE WHO PURCHASE, MORTGAGE, OR INSURE THE TITLE THERETO.

DATED THIS 2nd DAY OF October 2014

Michael G. McCarty

MICHAEL G. Mc CARTY S-2298



CAD : D:\B\LDHS\DC CO-OP 15581\581-LGL SHEET 1 OF 1

JOB NO. 15581

DOC # :

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